

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

Robert Lee Jenkins,)	Civil Action No. 8:09-cv-3293-RMG
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
South Carolina Department of Corrections,)	
et. al.,)	
)	
Defendants.)	
)	

Plaintiff filed this action pursuant to 42 U.S.C. § 1983 claiming various constitutional violations. The Magistrate Judge recommended granting Defendants' summary judgment motion. (Dkt. No. 87). Plaintiff has not objected to the R&R. As shown herein, this Court has reviewed the Record for any errors of law and agrees with the Magistrate Judge's report. Therefore, this Court adopts the Magistrate Judge's report as the Order of this Court and it is incorporated by reference herein.

Discussion

The magistrate judge makes only a recommendation to this Court. The recommendation has no presumptive weight, and responsibility for making a final determination remains with this Court. *Mathews v. Weber*, 423 U.S. 261, 270-71, 96 S.Ct. 549, 46 L.Ed.2d 483 (1976). This Court is charged with making a *de novo* determination of those portions of the Report and Recommendation to which specific objection is made, and this Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). This Court may also "receive further evidence or recommit the matter to the magistrate with instructions." *Id.*

Here, the Plaintiff has failed to object the Magistrate Judge's Report and Recommendation. The Record reveals that first and foremost, Plaintiff failed to exhaust his administrative remedies before filing this Complaint. Further, the use of mace here does not give rise to an excess force claim. It is undisputed that Plaintiff failed to follow a corrections officer's directive and Plaintiff concedes, at least, that he may have appeared intimidating to the officer. Moreover, Defendants have not been deliberately indifferent to Plaintiff's medical needs. The Record contains voluminous reports evidencing proper medical care. Last, Plaintiff has not and cannot demonstrate any conspiracy exists or that he has suffered any injury from the alleged denial of access to the courts.

Conclusion

Accordingly, the Defendants' motion for summary judgment is **granted**.

AND IT IS SO ORDERED.

s/ Richard Mark Gergel
Richard Mark Gergel
United States District Court Judge

December 23, 2010
Charleston, South Carolina